



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Fabio GIANETTI et al.  
Title: METHOD AND DEVICE FOR DELIVERING DATA  
Application No.: 10/668,959  
Filing Date: 09/24/2003  
Examiner: Cong Lac T. Huynh  
Art Unit: 2178  
Confirmation No.: 1492

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with the New **Pre-Appeal Brief Conference Pilot Program**, announced July 11, 2005, this Pre-Appeal Brief Request is being filed together with a Notice of Appeal.

**REMARKS**

The following rejections are being presented for review. Claims 1-3, 5-7, 9, 11, 17-21 and 23-28 were rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent Publication No. 2002/0143822 ("Brid"). Claims 8, 13, 15 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brid. Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Brid in view of U.S. Patent No. 5,038,293 ("Goodman").

**Claim Rejections under 35 U.S.C. § 102**

Applicants respectfully traverse the rejection under 35 U.S.C. § 102 for the reasons set forth below. Applicants rely on M.P.E.P. § 2131, entitled "Anticipation – Application of

35 U.S.C. § 102(a), (b) and (e)” which states, “a claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Applicants respectfully submit that Brid does not describe each and every element of independent claims 1, 8-11, 13, 15 and 20-22.

Independent claims 1, 8-11, 13, 15 and 20-22 are directed toward a method, computing device, network or server for delivering data to any of two or more data-handling devices having different handling capabilities. For example, claim 1 recites the steps of storing the versions of the initial portions of the data and upon receipt of a request for data, adapting one of the preferred or alternative version of the initial portions of the data by augmenting the initial portion of the data with dynamically generated data, wherein the method determines with which version of the initial portion of the data the dynamically generated data fits most appropriately and augments that version with the dynamic data, and delivering the initial portion of the data augmented with the dynamically generated data to at least one data-handling device. Independent claims 8-11, 13, 15 and 20-22 contain similar limitations.

Accordingly, the claimed method, computing device, network or server not only adapts data for display on a specific device but also allows a layout to be tailored to dynamic data of differing lengths, unknown nature at the time of creation of the initial portion of the data or other similar situations. For example, the claimed invention determines whether the dynamic data to be displayed is better viewed using the preferred or alternative version of the initial portion data (“which version of the initial portion of the data the dynamically generated data fits most appropriately”). The dynamic data is then displayed using the better of the alternative or preferred versions.

In contrast, Brid does not disclose each and every limitation of the claimed invention. Brid is directed to generating an adaptive layout. Brid discloses generating a device independent template and a second device-specific template associated with a specific device. *See* Col. 2, lines 13-15. The device-specific template defines a data representation format for displaying the requested data on the device generating the request. *See* Col. 2, lines 17-19. Brid does not disclose determining whether the requested data would be formatted better

using the independent template or the device-specific template. Instead, the data is manipulated into a format specified by the device-specific template. *See* Col. 4, lines 61-65. Accordingly, Brid does not disclose teach or suggest determining “which version of the initial portion of the data the dynamically generated data fits most appropriately and augment[ing] that version with the dynamic data” as claimed in independent claims 1, 8-11, 13, 15 and 20-22.

In the Final Office Action dated December 27, 2007, the Examiner asserts that the claimed determining step is disclosed in paragraph [0029] of Brid. In paragraph [0029] and Fig. 2, Brid explains that it determines whether a “device-specific template has already been generated.” The decision step in Fig. 2, step 208 says, “Has a Device-Specific Template Already Been Generated?” If a device specific template has not been generated, one is created (Step 210). Accordingly, all that Brid determines is whether a device-specific template exists.

In contrast, the method, computing device, network or server of independent claims 1, 8-11, 13, 15 and 20-22 determine whether dynamically generated data fits best with a preferred version of data or an alternative version of data. Thus, the claimed determining step of claims 1, 8-11, 13, 15 and 20-22 determines which combination of data fits most appropriately. This determination is completely different from simply determining whether a template exists as disclosed in Brid. Further, Brid does not disclose comparing data with dynamic data. As claimed in claims 1, 8-11, 13, 15 and 20-22, once the most appropriate fit is determined, the alternative version or preferred version of data is augmented with the dynamic data.

The examiner’s rebuttal in the Final Office Action extensively utilizes the terms used in the claims, however, it fails to specifically point to any passage in Brid where the claim limitations are taught. The Examiner cites to broad passages and simply assumes that Brid anticipates the claims because it determines whether a device template exists, however, this assumption is not enough without evidentiary support to substantiate a rejection under 35 U.S.C. § 102.

M.P.E.P. § 2131 states that “[t]he identical invention must be shown in as complete detail as is contained in the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). Here, Brid fails to disclose the above-referenced limitation in any detail. Specifically, Brid fails to disclose determining with which version of the initial portion of the data the dynamically generated data fits most appropriately and augmenting that version with the dynamic data. Accordingly, Applicants respectfully request that the rejection be withdrawn and independent claims 1, 8-11, 13, 15 and 20-22 be allowed. Further, claims 2, 3, 5-7, 12, 14, 16-19 and 23-28 depend from one of claims 1, 8-11, 13, 15 and 20-22 and should therefore be allowed for at least the reasons set forth above without regard to further patentable limitations recited therein.

#### **Claim Rejections under 35 U.S.C. § 103**

Claims 8, 13, 15 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brid.

As stated above, Brid fails to disclose teach or suggest each and every limitation of independent claims 8, 13, 15 and 22. Accordingly, for at least the reasons set forth above, independent claims 8, 13, 15 and 22 should be allowed.

#### **Double Patenting Rejection**

Claim 11 was provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/349,668. In response, deferral of a response to this rejection is requested until patentable subject matter has been indicated by the PTO, at which time a terminal disclaimer will be filed (or arguments made as to why this rejection is incorrect).

**Conclusion**

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance.

*At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 C.F.R. § 1.25. Additionally, charge any fees to Deposit Account 08-2025 under 37 C.F.R. § 1.16 through § 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.*

Respectfully submitted,

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